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7 EN POINTE TECHNOLOGIES SALES, LLC,
 f/k/a PCM SALES ACQUISITION, LLC

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

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11 EN POINTE TECHNOLOGIES SALES,
12 LLC, a Delaware limited liability company,
 f/k/a PCM SALES ACQUISITION, LLC,

13 Petitioner,

14 v.

15 OVEX TECHNOLOGIES (PRIVATE)
16 LIMITED,

17 Respondent.
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Case No.: 2:17-cv-4362

**EN POINTE'S APPLICATION FOR
LEAVE TO FILE DOCUMENT
UNDER SEAL IN SUPPORT OF
PETITION TO COMPEL
ARBITRATION AND FOR ANTI-
SUIT INJUNCTION**

[Filed concurrently with Declaration of
David M. Stein and [Proposed] Order]

Filed: June 12, 2017

1 **I. Introduction**

2 Pursuant to Local Rule 79-5.2.2, Plaintiff En Pointe Technologies Sales, LLC
3 (“En Pointe”) applies to file the following document under seal:

- 4 • Contract for Services and Statement of Work between En Pointe
5 Technologies Sales, Inc. and Ovex Technologies (Private) Limited (the
6 “Service Contract”), which is attached as Exhibit A to the Declaration
7 of David M. Stein in Support of the Petition for Order Compelling
8 Arbitration and for an Anti-Suit Injunction.

9 En Pointe is lodging the Service Contract with the Court and asking for leave
10 to file it under seal because it is labeled confidential and discusses confidential
11 business terms. We do not wish to be accused of breaching the contract by filing it
12 publicly, but it is the core, operative document underlying the requested relief.

13 Sealing of the Service Contract is, therefore, appropriate to protect it from
14 disclosure and to avoid En Pointe from being accused of breach by filing it.

15 **II. Discussion**

16 Although courts generally recognize a strong presumption of public access to
17 court records, this presumption is not without limits. “Every court has supervisory
18 power over its own records and files,” and a district court’s order sealing its records
19 is “an exercise of its inherent supervisory power.” *Hagestad v. Tragesser*, 49 F.3d
20 1430, 1433–34 (9th Cir. 1995); *see also Foltz v. State Farm Mut. Auto. Ins. Co.*, 331
21 F.3d 1122, 1135 (9th Cir. 2003). In determining whether to seal court records,
22 “courts should consider all relevant factors.” *Foltz*, 331 F.3d at 1135.

23 Two standards generally govern motions to seal: “good cause” and
24 “compelling reasons.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir.
25 2010). Where a party seeks to limit access to documents attached to a dispositive
26 motion, the litigant must show that compelling reasons outweigh the presumption in
27 favor of disclosure. *Foltz*, 331 F.3d at 1136. In contrast, “‘good cause’ suffices to
28

1 warrant preserving the secrecy of sealed discovery material attached to
2 nondispositive motions.” *Id.* at 1135.

3 Recent Ninth Circuit authority clarifies that “public access to filed motions
4 and their attachments does not merely depend on whether the motion is technically
5 ‘dispositive.’” *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101
6 (9th Cir.), *cert. denied sub nom. FCA U.S. LLC v. Center for Auto Safety*, 137 S. Ct.
7 38, 196 L. Ed. 2d 26 (2016). “Rather, public access will turn on whether the motion
8 is more than tangentially related to the merits of a case.” *Id.* Where the motion is
9 tangentially related to the merits of the case, good cause suffices. Where the motion
10 is “more than tangentially related” to the merits of the case, the party seeking to seal
11 records must demonstrate compelling reasons to overcome the presumption of
12 access. *Id.*

13 The appropriate standard here is “good cause.” The Service Contract is
14 submitted in support of a petition that merely seeks an order compelling arbitration
15 and enjoining a lawsuit in a foreign court. The relief sought does not seek a
16 determination regarding the merits of the case.

17 Under either the “good cause” standard or the “compelling reasons” standard,
18 the Service Contract is sealable. Courts have acknowledged various overriding
19 interests that warrant protection. “The overriding interest can involve the content of
20 the information at issue, the relationship of the parties, or the nature of the
21 controversy.” *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1073 (3d Cir. 1984).
22 A “binding contractual obligation not to disclose certain information” can constitute
23 an overriding interest because unbridled disclosure of the information would deprive
24 the litigant of his right to enforce a legal obligation. *Id.* “An enforceable
25 confidentiality agreement” may therefore provide a reason to deny public access to
26 records that otherwise would not be sealable. *Id.* at 1074.

1 In this case, the Service Contract is labeled “confidential,” evidencing the
2 parties’ intention to keep it confidential, a legal right that can be enforced if the
3 Court seals the Service Contract. Moreover, there is little public interest in this
4 confidential contract. The overriding interest described above overcomes the right
5 of public access to the record. The nature of this case – which involves the misuse
6 of confidential business information and the misappropriation of trade secrets –
7 compels En Pointe to act with caution.

8 **III. Conclusion**

9 En Pointe respectfully asks the Court for an Order granting it leave to file the
10 Service Contract under seal.

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12 Dated: June 12, 2017

Respectfully submitted,

13 **GREENBERG GROSS LLP**

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16 By: /s/ David M. Stein

David M. Stein

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18 Attorneys for Petitioner
19 EN POINTE TECHNOLOGIES SALES,
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